IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.505 OF 2007

Smt. Padmini Nandkumar Nair ..Appellant

Versus

Shri Wamanrao Daguji Bodake & Ors. ..Respondents

Shri A.A.Kumbhakoni with Shri A.M. Kulkarni for the Appellant.
Shri S.G.Deshmukh for the Respondent Nos.1 and 2.
Shri A.G.Talhar for the Respondent No.3.
Mrs S.M.Linge-Talhar for the Respondent Nos.4 and 7.

CORAM : ABHAY S.OKA, J.

DATE ON WHICH SUBMISSIONS ARE HEARD. : JUNE 28, 2007.

DATE ON WHICH JUDGMENT IS PRONOUNCED. : JULY 10, 2007.

P.C.:

1. I have heard detailed submissions of the learned counsel appearing for the parties on 27th June and 28th June, 2007. After conclusion of the submissions, on 28th June, 2007, the Appeal From Order was kept for dictation of Judgment on 02nd July, 2007. As a notification was received in the evening on 28th June, 2007 regarding change of roster with effect from 02nd July, 2007, the papers of the Appeal were ordered to be produced before this Court on 29th June, 2007 with a notice to the Advocates appearing for the parties. On that day the parties were informed that the Judgment was being reserved and the same will be

pronounced later on.

2. This Appeal arises out of a suit filed by a married daughter (i.e the Appellant) against her parents, brothers and sister. The Appellant is a judicial officer. The question involved in the Appeal is whether the Appellant is entitled to an equitable and discretionary relief of temporary injunction. The Appellant is the original Plaintiff who has taken an exception to the Judgment and Order dated 07th June, 2007 passed by the learned Civil Judge, Senior Division at Niphad below Application at Exhibit 5 made by the Appellant for grant of temporary injunction.

3. The Appellant filed a suit for partition and separate possession of her alleged 1/7th undivided share in the suit properties more particularly described in the schedule annexed to the plaint. The first Respondent is the father of the Appellant. The second Respondent is the Appellant’s mother. The third and fourth Respondents are the real brothers of the Appellant. The fifth Respondent is the sister of the Appellant. The sixth Respondent is the son of a deceased brother of the Appellant and the seventh Respondent is the widow of the said deceased brother.

4. The case of the Appellant in short is that her

paternal grandfather late Daguji Bhaurao Bodake was a resident of village Dongaon and was holding ancestral agricultural lands and other properties. The Appellant's grandfather started business of sale of onions and for the convenience of the said business, he shifted to Manmad. According to the case of the Plaintiff, various properties were acquired by the deceased Daguji from the income received from the business. It is stated that after the demise of Daguji, his business was looked after by the first Respondent and Appellant's uncle late Hari Daguji Bodake.

5. The case of the Appellant is that after demise of Daguji, the first Respondent constructed a theatre by name "Jayashree" at Manmad. According to the case of the Appellant, the business of onion was continued by the first Respondent which is being run under the name and style "M/s. Daguji Bodake and Company" and "Kailas Company". It is stated that the first Respondent's brother Hari separated by taking his share. It is alleged that the first Respondent is a very intelligent person and all the members of the family of the first Respondent are under the influence of the first Respondent. It is contended that Hari Bodake was a simple man and therefore, he executed a partition though the same was inequitable. It is

alleged that the third and fourth Respondents had another brother-late Kailash who started participating in the business of the grandfather. They started two companies. Two factories were established in the name of M/s.Prime Plast Private Ltd and M/s. Vijay Exhibitors.

6. According to the case of the Appellant the first Respondent did not like the intention of the Appellant to continue with the education. When the Appellant joined LLB course, the first Respondent drove away the Appellant out of his house. It is stated that with the support of her maternal uncle, the Appellant completed education and started practising as a lawyer. It is stated that after practising law for few years, she joined judicial service of the State of Maharashtra. According to the Appellant, the first Respondent had cut all the links with the Appellant and she was not even invited for any family functions.

7. According to the case made out by the Appellant, the first Respondent’s behaviour with the Appellant improved from the year 2003. However, the first Respondent never behaved in the manner in which he was expected to behave with a daughter. As the Appellant was in need of money, in the year 2000-2003

the first Respondent agreed to pay a sum of Rs.4,00,000/- to the Appellant by way of a gift. It is alleged that the first Respondent obtained a writing dated 03rd June, 2003 from the Appellant on a non-judicial stamp paper of Rs.50/-. It is alleged that the first Respondent compelled the Appellant to write the document as per his wish and though the said document was not legal, the Appellant was compelled to sign the said document against her wish. It is contended that the said document was not binding on her.

8. The first and second Defendants filed written statement opposing the suit filed by the Appellant. It is stated that after the Appellant became a judicial officer, from the year 1995 she started sending notices by giving threats to drag the Respondents to the Court. It is stated that the Appellant demanded a sum of Rs.4,00,000/- from the first and second Defendants and stated that in consideration of receipt of Rs.4,00,000/- she had given up her alleged right, title and interest in respect of the suit property. It is alleged that writing dated 03rd June, 2003 is executed by the Appellant voluntarily. In the written statement the said Respondents have set out as to how the suit properties are not the ancestral properties. It is

set out in the written statement that some of the properties are the self acquired properties of the some of the Defendants. The other Defendants also filed the written statement for contesting the suit.

9. The learned trial Judge by the impugned order held that the properties described in Ist schedule to the plaint which are agricultural lands at village Dongaon, Tal. Chandvad, District Nasik were prima facie the ancestral properties. The learned Judge held that there was no prima facie material produced by the Appellant to establish that the properties described in IInd and IIIrd schedule are the joint family properties and that the same were acquired from the income of the joint family. The learned Judge accepted the case of the Respondents that the said properties described in the IInd and IIIrd schedule were self-acquired properties. The learned Judge observed that the case made out by the Defendants regarding acceptance of Rs.4,00,000/- by the Appellant and relinquishment by the Appellant of her right, title and interest will be considered after the evidence is recorded. Thus, the Application for temporary injunction was partly allowed as regards properties mentioned in the Ist schedule by restraining the Respondents from creating any third party interests in respect of the said properties.

10. Shri Kumbhakoni, the learned Associate Advocate General has made extensive submissions. He invited my attention to the Will dated 02nd April, 1972 allegedly executed by Daguji. He pointed out that the said Will itself establishes that the lands forming part of Ist schedule of the plaint which are held to be ancestral properties were yielding some income. He submitted that the burden on the Appellant was to show the existence of nucleus from which the properties in IInd and IIIrd schedule of the plaint could have been acquired. He submitted that the said Will itself establishes the existence of nucleus. He submitted that there was no prima facie material placed on record by any of the Defendants to show as to how the consideration was paid for acquiring the properties described in IInd and IIIrd schedule. He submitted that there was sufficient explanation in the plaint as regards the execution of the writing dated 03rd June, 2003. He pointed out that the Respondents have not challenged the order granting temporary injunction in respect of properties described in Ist schedule. He submitted that as the properties which are held to be ancestral properties were yielding income, it is obvious that a prima facie case was made out by the Appellant to grant injunction even in respect of properties mentioned in IInd and IIIrd

schedule. He submitted that the alleged writing dated 03rd June, 2003 has been sufficiently explained by the Appellant in the plaint. He submitted that the recent amendment to the Hindu Succession Act, 1956 came into force after the alleged writing dated 03rd June, 2003 was executed and on the basis of the said amendment, the Appellant was claiming a share in the ancestral property equal to that of her brothers. He submitted that the trial Court has not accepted the case made out by the Respondents on the basis of document dated 03rd June, 2003 which is admittedly not a registered document.

11. The learned counsel appearing for the Respondents supported the impugned Judgment and Order and contended that no interference is called for.

12. I have carefully considered the submissions. A reliance was placed on the Will dated 02nd April, 1972 executed by the deceased Daguji. In clause (2) of the said Will he has stated that there was an ancestral agricultural land bearing survey No.17 and 18 admeasuring 26 Ares at village Dongaon. In the Will it is stated that the said land was not generating sufficient income. It is further stated in the Will that as the said income from the agricultural land was not sufficient, the said Daguji had taken up

employment and had done labour work for ten years. He specifically stated that by utilising the savings from the earnings from the employment and labour work, he started a business of sale of vegetables and from the income of the said business he himself acquired various properties. It is stated in the Will that the first Respondent was working with deceased Daguji in partnership and out of the income earned from the partnership, he had acquired various properties. The said Will infact notes that the property acquired by Daguji is the self-acquired property acquired by him from the income of his own business. It is stated in the Will that by utilising savings out of the income from the employment and labour work, he started his own business. Prima facie, the said Will does not support the case made out by the Appellant that the properties in IInd and IIIrd schedule were acquired from the income of the ancestral agricultural lands.

13. It will be necessary to refer to the writing dated 03rd June, 2003. There is no dispute that the Appellant is a law graduate and on the date on which the said writing was admittedly executed by her she was holding a judicial post. The stamp paper on which the said writing is made is purchased by the Appellant herself as it bears the name of the Appellant and her signature. There is a schedule annexed to the said

document in which most of the suit properties are incorporated. In the said document which is admittedly executed by the Appellant, she has stated that the property which is described in the schedule was self-acquired property of her father i.e the first Respondent. It is stated by her that the property has been acquired by the first Respondent from his own business. She has further stated in the document that on 22nd October, 1995 she had issued a notice to the first Respondent through her Advocate calling upon the first Respondent to give her share in the said properties. It is stated in the writing dated 03rd June, 2003 that the notice was issued by her due to misunderstanding and the notice issued by her was not legal. She recorded that she received a sum of Rs.2,00,000/- each from the first and second Respondents by cheques. She has stated that she will not claim any share in the properties. As stated earlier, the execution of the said document is not disputed and it is not disputed that the stamp paper is purchased by the Appellant. It is alleged in paragraph No.7 of the plaint that as the Appellant was badly in need of money, while paying a sum of Rs.4,00,000/- to the Appellant, the first Respondent compelled the Appellant to write as per his own wish. It is stated that she singed the document against her wish as she was badly in need of money. It is

pertinent to note that on the day on which the writing was executed by her, she was holding a judicial post. It must be also noted here that the suit is filed on 23rd March, 2007 and the writing is executed on 03rd June, 2003. It is an admitted position that from 03rd June, 2003 till the date on which the suit was filed in the year 2007, the Appellant has not made any grievance about the document dated 03rd June, 2003. For a period of more than three and half years, the Appellant never made an allegation that she was compelled to sign the said writing. Whether the said writing has the effect of relinquishment or not is a different question. But the said writing records an unqualified admission by the Appellant that the first Respondent has acquired most of the suit properties from his own business and the properties are self-acquired properties of the first Respondent. As stated earlier, the date on which the said document was executed the Appellant, she was holding a judicial post. Therefore, it is impossible to accept that the Appellant was either mislead or was compelled to sign the said writing. The said contention raised by the Appellant appears to be clearly an afterthought as the same has been raised nearly three and half years after the date of execution of the said document. As stated earlier the Appellant accepted in the said writing that the properties held by her father are

self-acquired properties. The Appellant has not disputed that she had received a sum of Rs.4,00,000/- from her parents at the time of executing the writing dated 03rd June, 2003. According to her the said amount is paid to her as a gift. The suit is filed by her three and half years after the receipt of the amount of Rs.4,00,000/- from her parents.

14. The relief of temporary injunction is always discretionary. The said relief has to be granted on equitable considerations. Considering the aforesaid conduct of the Appellant, this is not a case where an interference can be made in Appeal From Order with the interim order passed by the trial Court which is of discretionary nature. The impugned judgment is not shown to be perverse. The Appellant has been protected in respect of part of the suit properties which are found to be ancestral properties. The suit for partition is still pending. It is obvious that any further transactions made in respect of the other properties for which a protection is not granted will be subject to final outcome of the suit.

15. No case is made out for interference. The Appeal From Order is accordingly dismissed.

16. It is made clear that the observations made in this Judgment are for limited purposes of considering

the prayer for grant of temporary injunction and the trial Court will decide the suit on its own merits.

JUDGE

. After pronouncement of the order, the learned counsel appearing for the Appellant seeks continuation of ad-interim relief granted by this Court. None appears for the Respondents. The ad-interim relief granted by this Court on 12th June, 2007 will continue to operate for a period of four weeks from today.

JUDGE